

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F305226

REBECCA PRIEST	CLAIMANT
ALDI, INC.	RESPONDENT
TRAVELERS INDEMNITY CO. OF IL INSURANCE CARRIER	RESPONDENT

OPINION FILED JANUARY 9, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by PHILLIP CUFFMAN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on October 14, 2003, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on July 2, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$440.00 for temporary total disability and \$330.00 for permanent partial disability.

By agreement of the parties the issues to litigate are limited to the following:

1. Compensability of the claimant's injury to her low back.
2. Related medical.
3. Temporary total disability from May 2, 2003, to a date to be determined.
4. Attorney's fees.

In regard to the foregoing issues the claimant contends that she had an injury on May 2, 2003, from an accident in which she was stocking shelves and received a herniated disc.

In regard to the foregoing issues the respondents contend that the claimant did not sustain a compensable injury on May 1, 2003, thus no benefits are due.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted two packets of medical information marked Claimant's Exhibit No. 1 and Claimant's Exhibit No. 2. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that she currently was 27 years old and had a high school education. The claimant testified that she went to work for the respondent in September 1998 and for the past year and a half she had been an assistant manager earning \$14.00 per hour. The claimant stated that she mainly stocked groceries but she also worked on the cash register. The claimant testified that on May 2, 2003, she was stocking cases of mayonnaise when she, all

of a sudden, started hurting real bad in her low back. The claimant testified that she told a co-worker that she was hurting really bad and needed to take a break in hopes that it would go away. The claimant testified that she took a break and then returned to her work for a short period of time and then told her co-worker that she could not go on. The claimant remembers that she called her manager and told him that she needed to leave that she had hurt her back while she was stocking. The claimant testified that her district manager called her the next day, which was a Saturday, and wanted her to go see their doctor which she did. The claimant testified that she was scheduled to work that Saturday but was not able to. The claimant remembers that her pain was so severe that she could not get out of bed and had to call the neighbors over to help her get dressed and drive her to the doctor since her husband had already gone to work.

The claimant testified that she was seen by Dr. Timothy Yawn and he ordered an MRI for her. The claimant testified that she has seen Dr. Yawn before this incident and that he has been her doctor for many years. The claimant testified that she saw Dr. Yawn in or around March 2002 for problems that she was having with her back resulting from an incident at her home. The claimant testified that in March 2002 when she saw Dr. Yawn for her back this was the first time she ever sought medical treatment for back problems. The claimant remembers that she was having a lot of pain in her lower left back with some slight pain in her left leg and slight numbness and tingling in her left leg. The claimant testified that

from this 2002 event up until May 2, 2003, she did not miss any time from work as a result of her back and continued to do her regular duties which required bending, lifting and all the physical requirements of her job.

The claimant testified that she saw Dr. Runnels for her back problems even though they were getting better. The claimant testified that when she saw Dr. Runnels she was still having slight pain down the back of her left leg that when all the way down into her calf but this pain eventually went away. The claimant again testified that she continued to do her regular work activities and the only thing that she restricted herself from doing was carrying her children. The claimant was asked to describe how her pain was different in May 2003 than it was in 2002 and she indicated that her pain was slight and it was in the left side of her back where she bends and it went down into her left leg. The claimant stated that after the 2003 event the pain was much more severe on the left but it protruded into the right side and made both of her legs hurt, the left one hurting more than the right. The claimant testified that this was a sharp pain which she had never experienced before and she did not experience such a pain with her February 2002 event. The claimant indicated that the pain from her last event was much more severe and radiated down both her legs both front and back. When asked to rate the level of her pain, the claimant responded that her first back event in 2002 would have rated about a five and the 2003 event would be a ten. The claimant stated that there are days that she cannot even get out of bed.

The claimant testified that Dr. Runnels and Dr. Yawn did not prescribed medications for her but she believes that Dr. Runnels did give her a shot.

The claimant testified that after May 2, 2003, she was seen by Dr. Gary Moffitt the respondent's doctor and he recommended an MRI but the respondents would not agree to her having this examination. The claimant stated that she saw Dr. Yawn and he referred her to Dr. Blankenship. The claimant testified that when she saw Dr. Blankenship on May 28, 2003, she gave him a history of how her problems began and she also told him about the February 2002 event. The claimant testified that at the time she saw Dr. Blankenship she took with her her two MRIs. The claimant testified that she currently is scheduled for surgery and she has been unable to work since May 2, 2003. The claimant again testified that sometimes she cannot even get out of bed, she cannot sit, she cannot twist, she cannot bend, she cannot lift and she cannot even raise her arms up to apply her makeup.

On cross examination, the claimant remembered that she was seen at the ER before she was seen by Dr. Yawn for her back complaints following her 2002 event. The claimant testified that she was taking medications when she first saw Dr. Yawn for her back problems but could not remember if she was still taking medications when she saw Dr. Runnels but she does remember that she did stop taking her medications at some point. The claimant testified that Dr. Runnels gave her a shot which caused her pain to go away and there was no need to take medications. The claimant testified that

probably when she saw Dr. Yawn initially for her back problems, her pain was much higher than a five but it gradually went away. The claimant testified that her pain completely went away after Dr. Runnels gave her a shot. The claimant testified that she did not know why the mylogram or diskogram that Dr. Blankenship recommended had not been done but she does remember that she has been seeing him pretty much every two weeks and that he has prescribed Oxycotin and Methadone for her. The claimant testified that on May 2, 2003, she saw Dr. Yawn and he had referred her on to Dr. Blankenship.

The claimant was seen by Dr. Timothy Yawn on May 2, 2003, with complaints of back pain. The claimant related to Dr. Yawn that she was lifting today when her pain occurred. After examination, Dr. Yawn assessed the claimant with low back pain and left sacroilitis for which he recommended moist heat twice a day, lumbar back exercises and he gave her prescriptions. The claimant had an MRI on May 8, 2003, which revealed an L4-5 moderate broad base central disc protrusion which has increased in size since the previous exam and there is also moderate spinal stenosis and moderate bilateral foraminal stenosis at this level. The doctor also noted that the claimant has an L3-4 mild central disc protrusion but doubts that this is of any clinical significance. This MRI also revealed degenerative disc change which most severely affects the L3-4 and L4-5 levels. The claimant was seen at the Lowell Medical Clinic by Dr. Konstantin Berestnev on May 9, 2003. The doctor's report indicates that the date of injury was May 2, 2003, and she was diagnosed with a lumbar strain superimposed on a herniated disc.

The claimant was released to work that day with no lifting more than thirty pounds, no pushing or pulling of anything greater than thirty pounds and no prolonged sitting. There is a status memo from the respondent dated May 12, 2003, regarding the claimant indicating that she is on family medical leave/workers' comp showing an injury date of May 2, 2003. In the comment section it indicates that the claimant is out on workers' comp because the doctor has put her on restrictions that they cannot modify. The claimant was seen by Dr. James Blankenship on May 28, 2003. Dr. Blankenship writes in the history that the claimant had a flair up of a preexisting back problem on May 2 when she was lifting some cases. After examination, Dr. Blankenship writes that he has also reviewed her MRI that does show a midline disc herniation at L4-5 with disc disruption and channel stenosis and she also has mild to moderate degenerative changes at L3-4 level with retrolisthesis at both levels. Dr. Blankenship recommended that the claimant begin an aggressive conservative treatment plan with physical therapy and medications. The doctor notes that the claimant does have some discogenic component to her pain that would be consistent with the findings that are noted on her plain films and her MRI. Dr. Blankenship saw the claimant on July 8, 2003, where it is noted that her physical therapy is not having any significant improvement on her symptoms. After examination, the claimant was diagnosed with persistent mechanical lower back pain with a probable significant discogenic component with an L4-5 disc herniation. Dr. Blankenship recommended an L3-4 and L4-5 diskograph with another

month of aggressive physical therapy with the addition of pool therapy prior to any consideration of surgical intervention. On August 5, 2003, Dr. Blankenship writes that the claimant has had a severe exacerbation of her pain over the past two weeks noting that her leg pain has been worse at night but she still had a marked degree of back and leg pain also. Dr. Blankenship writes that he has reviewed her old MRI and plain films and he feels like the L4-5 disc is the most likely etiology of her pain. Dr. Blankenship recommended an L3-4 and L4-5 diskography with post diskogram CT.

After a review of this entire record, I find that the claimant has proven by a preponderance of the evidence that she aggravated a preexisting back problem on May 2, 2003, while lifting a case of product for the respondent. The claimant has consistently reported her exacerbation of severe pain subsequent to the May 2, 2003, event and her symptoms have not been relieved even with aggressive conservative treatment. The claimant's MRI of May 8, 2003, sets forth that she has an L4-5 moderate broad based central disc protrusion which has increased in size since the previous exam. Dr. Floravanti performed an MRI on the claimant on March 27, 2002, as well as the exam of March 8, 2003, and he indicates that there are definite identifiable changes between these two tests. The claimant has testified to a specific incident occurring on May 2, 2003, and there are objective medical findings setting forth an increase in the size of her herniation at L4-5 and the doctor has set forth that her symptoms are consistent with the findings on her MRI. Therefore, I find that the claimant has, in fact, sustained

a compensable injury as a result of her lifting event on May 2, 2003. The claimant has testified that she has not been able to work since May 2, 2003, and the status memo from the respondent sets forth that they are unable to accommodate her restrictions, therefore, she shall be entitled to temporary total disability from May 3, 2003, to a date to be determined.

#### FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant is entitled to a weekly compensation rate of \$440.00 for temporary total disability and \$330.00 for permanent partial disability.

4. The claimant has proven by a preponderance of the evidence that she sustained a compensable sudden onset type injury while working for the respondent on May 2, 2003. See discussion above.

5. The respondents should pay for all the reasonable necessary medical treatment for this claimant's compensable back injury.

6. The respondents should pay temporary total disability to this claimant from May 3, 2003, to a date to be determined.

7. The respondents have controverted this claim in its entirety.

8. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

ORDER

The claimant has proven by a preponderance of the evidence that she sustained a compensable injury while working for the respondent on May 2, 2003.

The respondents should pay for all reasonable and necessary medical treatment for the cost of this claimant's compensable injury.

The respondents should pay temporary total disability to this claimant from May 3, 2003, to a date to be determined.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

All benefits herein awarded which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE